

ORIGINAL
RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

NOV 2 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DOCKET FILE COPY ORIGINAL

In re Applications of)	MM Docket No. 99-153
)	
READING BROADCASTING, INC.)	File No. BRCT-940407KF
)	
For Renewal of License of)	
Station WTVE(TV), WTVE)	
Reading, Pennsylvania)	
)	
and)	
)	
ADAMS COMMUNICATIONS)	File No. BPCT-940630KG
CORPORATION)	
)	
For Construction Permit)	

To: Administrative Law Judge Richard L. Sippel

MOTION TO DISMISS ADAMS' APPLICATION,
OR ALTERNATIVELY, TO ENLARGE ISSUES
(ABUSE OF PROCESS)

Thomas J. Hutton
Randall W. Sifers

HOLLAND & KNIGHT LLP
2100 Pennsylvania Ave., N.W.
Suite 400
Washington, DC 20037
(202) 828-1892

Counsel for
Reading Broadcasting, Inc.

November 2, 1999

No. of Copies rec'd
List ABCDE

OK

TABLE OF CONTENTS

<u>Summary</u>	ii
<u>Standard</u>	3
I. <u>There Is Substantial Evidence That Adams Filed Its Application For Speculative Purposes</u>	3
A. <u>The Settlement By Adams' Principals In The Video 44 Proceeding And Use Of The Same Counsel Shows That Adams Had Knowledge, When It Filed Its Application For Reading, That Settlement Was A Possible Outcome, The Occurrence Of Which Could Result In A Substantial Payment</u>	4
B. <u>Adams' Professed Reason For Filing Its Competing Application In Reading, Pennsylvania – That The Broadcasting Of Home Shopping Programming Does Not Serve The Public Interest – At Best, Lacks Credibility.</u>	8
C. <u>The Timing Of Significant Events Casts Doubt On Adams' Claim It Filed Its Application On Its Belief That WTVE Was Not Serving The Needs Of The Community</u>	15
D. <u>There Is Substantial Evidence That Adams' Investors Viewed The Filing Of Its Application Primarily As An Investment Opportunity Rather Than As An Opportunity To Build And Operate A Television Station To Address Its Alleged Concerns About WTVE's Programming</u>	16
E. <u>The Fee Arrangements Between Adams And Its Counsel Together With The Fee Arrangements Between Monroe And Its Counsel Show An Intent By Adams To Engage In Speculation</u>	20
II. <u>Adams Has Advanced False And Meritless Claims In This Proceeding For Purposes Of Delay, Harassment And Character Assassination.</u>	21
A. <u>Adams' Unsupported Conflict Of Interest Claim.</u>	22
B. <u>Adams' Unsupported Motions</u>	27
1. <u>Adams' First Motion Provided No Basis For Departing From The Commission's Ten-Year Rule</u>	28

2.	<u>Adams' Threshold Showing Similarly Ignored The Commission's Ten-Year Rule As Well As The Commission's Policy Against Comparative Character Demerits.</u>	29
3.	<u>Adams' Second Motion Failed To Present A Colorable Claim.</u>	30
4.	<u>Adams Has Violated The <i>Ex Parte</i> Rule</u>	30
C.	<u>Adams' Actions Present A Pattern Of Abusive Conduct</u>	32
III.	<u>In The Event Of Designation Of An Abuse Of Process Issue, The Remainder Of The Case Should Be Held In Abeyance.</u>	32

SUMMARY

Reading Broadcasting, Inc. ("Reading") hereby requests the dismissal of the application of Adams Communications Corporation ("Adams") as a speculative application not entitled to *Ashbacker* rights vis-à-vis the Reading application for renewal of the license of WTVE, Channel 51, Reading, Pennsylvania. In the alternative, Reading requests the designation of an abuse of process issue based on the evidence presented herein that Adams' application was filed for improper purposes and that Adams had abused the Commission's processes in prosecuting its application.

While principals of Adams claim that their application was spurred by the desire to serve the public interest by eliminating the home shopping programming offered on WTVE as of 1994, this explanation flies in the face of then-recent Commission pronouncements that home shopping programming serves the public interest. The principals of Adams also failed to show any connection to Reading that would explain such an interest in choices available to viewers in that area or any understanding of the underlying television market. The only clear motivation for the Adams application, in fact, is the multi-million dollar settlement that the Adams principals received in 1993 for settling another comparative renewal challenge.

In addition to filing a speculative application, Adams has abused the Commission's processes by asserting false and baseless claims in this proceeding and violating the Commission's ex parte rules. Accordingly, Adams' application

should be dismissed or Adams' baseless claims should be considered as part of an abuse of process issue.

WAS1 #757803 v1

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Applications of)	MM Docket No. 99-153
)	
READING BROADCASTING, INC.)	File No. BRCT-940407KF
)	
For Renewal of License of)	
Station WTVE(TV), WTVE)	
Reading, Pennsylvania)	
)	
and)	
)	
ADAMS COMMUNICATIONS)	File No. BPCT-940630KG
CORPORATION)	
)	
For Construction Permit)	

To: Administrative Law Judge Richard L. Sippel

MOTION TO DISMISS ADAMS' APPLICATION,
OR ALTERNATIVELY, TO ENLARGE ISSUES
(ABUSE OF PROCESS)

1. For the reasons set forth herein and pursuant to the authority granted the Presiding Officer to deal with the exigencies of a comparative renewal proceeding, Reading Broadcasting, Inc. ("Reading"), by its attorneys, hereby submits its motion requesting the Presiding Officer to dismiss Adams Communications Corporation's ("Adams") pending application, or alternatively, pursuant to Section 1.229 of the Commission's Rules, Reading hereby moves to enlarge the issues in the above-captioned proceeding to include the following issues:

To determine whether Adams Communications Corporation has abused the Commission's processes by the filing of a broadcast application for speculative or other improper purposes and by asserting false and

meritless claims for purposes of delay, harassment and character assassination.

2. Reading herein presents substantial and specific evidence that shows Adams has engaged in numerous instances of abuse of the Commission's processes by using the renewal process for purposes unrelated to the public interest goals which the process is meant to achieve.¹ Abuse of process is serious willful misconduct which directly threatens the integrity of the Commission's licensing process. *Character Policy Statement*, 102 FCC 2d 1179, 1227-29 at ¶¶102-106 (1986).

3. At issue here is whether Adams' principals acted with a good faith belief that WTVE was not meeting the needs of its community of license because it was predominantly providing a home shopping programming format, or whether they filed a competing application for speculative purposes. The record in this proceeding provides substantial evidence that rather than filing its application with the proper intent to build and operate the station, Adams instead filed its application for speculative or other improper purposes, a practice forbidden under Commission policy.²

¹ The term "abuse of process" is a broad concept "that includes use of a Commission process to achieve a result that the process was not intended to achieve or to use that process to subvert the purposes the process was intended to achieve." *See Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process*, 3 FCC Rcd 5179, 5199 n.2 (1988) ("*Broadcast Renewal Applicants*") (subsequent history omitted).

² *See Implementation of Section 309(j) of the Communications Act*, 13 FCC Rcd 15920 (1998) at ¶214 (Commission will waive the limitation on payments

4. Standard. Under the Commission's rules and precedent, the Presiding Officer is afforded wide latitude and discretion to regulate comparative hearings. *See, e.g., Marling Broadcasting of Central Florida, Inc.*, 2 FCC Rcd 2025 (Rev. Bd. 1987). That authority is broad enough to enable the Presiding Officer to dismiss an applicant's application if he finds that the applicant is not a *bona fide* applicant. Alternatively, the Presiding Officer may grant Reading's motion to enlarge the issues in this proceeding upon finding, pursuant to Section 1.229 of the Commission's Rules, that, with respect to the requested issue, Reading has set forth specific allegations of fact, supported, where necessary, by affidavits from persons with personal knowledge, demonstrating the existence of substantial and material questions of fact that Adams has engaged in abuses of the Commission's processes.

I. There Is Substantial Evidence That Adams Filed Its Application For Speculative Purposes.

5. Reading has uncovered substantial and specific evidence that Adams filed its application without any real interest or intent to build and operate the proposed station. Rather, Adams apparently filed its application for speculative purposes, and therefore, Adams cannot be considered a *bona fide* applicant. In the *Ashbacker* case, the Supreme Court held that only *bona fide* applications are entitled to comparative consideration.³ Had the Commission known that the Adams application was filed for speculative purposes, and thus Adams was not a *bona fide*

in settlement where the circumstances afford assurance that the competing applications were not filed for speculative or other improper purpose).

³ *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327, 333 (1945).

applicant, there never would have been any reason to designate a hearing in this case.

6. Even though Adams' actions on October 15, 1999 resulted in the abrupt suspension of Reading's depositions of Adams' principals,⁴ Reading has been able to obtain, in part through the completed depositions, substantial and specific evidence that is particularly probative as indicia that Adams filed its application for speculative purposes. The evidence provided herein leads to the ineluctable conclusion that Adams' underlying motive and intent when filing its application was for speculative, or other improper purposes, and not for constructing and operating a television station in Reading, Pennsylvania.

- A. The Settlement By Adams' Principals In The Video 44 Proceeding And Use Of The Same Counsel Shows That Adams Had Knowledge, When It Filed Its Application For Reading, That Settlement Was A Possible Outcome, The Occurrence Of Which Could Result In A Substantial Payment.

7. The principals of Adams were also principals in Monroe Communications Corporation ("Monroe"), an entity that filed a competing application against Harriscope of Chicago d/b/a Video 44 ("Video 44"), an incumbent

⁴ On October 15, 1999, counsel for Adams in an on-the-record telephonic hearing before the Presiding Officer and with counsel for Reading present, lodged a formal request that counsel for Reading disqualify itself because of an alleged conflict of interest. Adams' complaint led to, *inter alia*, suspension of the scheduled depositions by Reading of Adams' principals that were taking place in Chicago, pending resolution of the matter. Later that same day, Adams' filed, by facsimile, its *Notification of Withdrawal of Objection to Representation of RBI by Holland & Knight* ("Notification"), and withdrew its objection. To date, the depositions of Adams' remaining principals have not been rescheduled.

licensee seeking renewal of its license to operate a television station on Channel 44 in Chicago, Illinois. Although Monroe, after a complex proceeding,⁵ was ultimately awarded the construction permit for Channel 44, it entered into a settlement agreement wherein Monroe dismissed its application, allowing the renewal of Video 44's license, in exchange for payments totaling over \$17.5 million, plus interest. See *Order*, FCC 92I-097 (released December 24, 1992) (provided herewith as Exhibit A).

8. As Adams confirmed in its *Response of Adams Communication Corporation to "Motion to Compel Disclosure of Fee Arrangements"* ("Adams' Response"), filed October 26, 1999, the Monroe settlement included "payment over and above Monroe's reasonable and prudent expenses." *Adams' Response* at n.1. Although the Commission's rules, at the time of the Monroe settlement, limited the amount of payments which could be made in exchange for the dismissal of an application that was mutually exclusive with a broadcast license renewal application,⁶ such rules were not applicable to the Monroe settlement, because that case was designated for hearing prior to the effective date of the new rules. Thus, in that proceeding, there was no substantive limitation on the amount of the

⁵ See *Harrisclope of Chicago, Inc. et al., A Joint Venture d/b/a Video 44*, 102 FCC 2d 419 (A.L.J. 1985), *remanded in part and certified in part*, 102 FCC 2d 408 (Rev. Bd. 1985), *rev. granted*, 103 FCC 2d 1204 (1986), *recon. granted in part*, 3 FCC Rcd 757 (1988), *on remand*, 3 FCC Rcd 3587 (Rev. Bd. 1988), *rev. denied*, 4 FCC Rcd 1209 (1989), *remanded sub nom. Monroe Communications Corp. v. FCC*, 900 F.2d 351 (D.C. Cir. 1990), *application granted*, 5 FCC Rcd 6383 (1990), *recon. denied*, 6 FCC Rcd 4948 (1991) ("Video 44").

⁶ See *Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative*

settlement payment that Monroe could receive in exchange for the dismissal of its application.

9. Reading acknowledges that settlement agreements in comparative renewal proceedings are not *per se* illegal. It is only when competing applications are filed for speculative or other improper purposes, that an abuse of process transpires. *See Implementation of Section 309(j) of the Communications Act*, 13 FCC 15920 at ¶214.

10. In this case, that each of Adams' principals (other than a 1% stockholder) and their counsel, Bechtel & Cole, were involved in the Video 44 settlement, together with the fact that each of Adams' principals profited substantially from the settlement, establishes that Adams' principals were fully aware that settlement was a potential outcome in the event it filed a competing application for Reading, Pennsylvania, and that the amount of the settlement payment could be substantial. *See Garden State Broadcasting Limited Partnership v. FCC*, 996 F.2d 386, 392-93 (D.C. Cir. 1993) (The experience and substantial profit that was derived from a prior settlement proceeding proved that the principals in the instant proceeding were aware of the potential reward of settlement). In view of the substantial payment that resulted from the *Video 44* settlement, the principals of Adams would indeed have had a very strong motive and incentive to seek out, investigate and determine whether they could reap similar such lucrative payments by filing competing applications against other renewal applicants. This factor alone

Renewal Process and to the Prevention of Abuses of the Renewal Process, 4 FCC Rcd.

is highly probative that the filing of Adams' application in Reading, Pennsylvania was motivated by the prospect of settlement, or other speculative purpose, rather than concern about Reading's programming.

11. Adams will claim that it could not have filed for purposes of making a profit because the Commission changed its rules to preclude for-profit settlements. However, the Commission is always free to waive or modify its rules, and has done so quite freely in the case of for-profit settlements. *See, e.g., FCC Waives Limitations on Payments to Dismissing Applicants in Universal Settlements of Cases Subject to Comparative Proceedings Freeze Policy*, 10 FCC Rcd 12182 (1995); *Implementation of Section 309(j) of the Communications Act*, 13 FCC Rcd 15920 (1998) at ¶214. In addition, experienced communications counsel could be expected to suggest creative settlement arrangements (*e.g.*, a "gray knight" settlement) in the event a waiver were not available.

12. Reading's sole purpose for presenting evidence regarding the *Video 44* settlement is to establish that the amount of payment received by each of Adams' principals in the *Video 44* settlement is highly probative of Adams' motive and intent to file competing applications for speculative purposes. Reading takes no position with regard to whether Monroe's application in Chicago was a *bona fide* application or whether Monroe abided by the Commission's rules and policies regarding settlement payments when it negotiated the settlement in the *Video 44* proceeding.

4780, 4788 at ¶59 (1989), *recon. denied*, 5 FCC Rcd 3902 (1990).

B. Adams' Professed Reason For Filing Its Competing Application In Reading, Pennsylvania – That The Broadcasting Of Home Shopping Programming Does Not Serve The Public Interest – At Best, Lacks Credibility.

13. The deposition testimony of two of Adams' principals shows that Adams' professed reason for filing its competing application in Reading, Pennsylvania arose from its concern about whether WTVE was rendering a service to the community, and Adams' subsequent conclusion that because WTVE broadcast home shopping programming, it was not serving the needs of the Reading community. However, Adams' actions, together with Commission policy that the broadcast of home shopping programming may serve the public interest provides substantial and specific evidence that Adams' reason for filing its competing application is, at best, without credibility.

14. Howard Gilbert, Adams' vice president and director, stated in deposition testimony that his interest in evaluating WTVE in Reading, Pennsylvania was to determine "whether they were rendering a service to the community." See Exhibit B at 14. Mr. Gilbert determined by pronouncement that WTVE (as well as other television stations in the country that broadcast home shopping programming) was not serving the needs of the community, based on the fact that WTVE, at that time, broadcast home shopping programming. See Exhibit B at 15.

15. Mr. Gilbert has never lived in Reading, Pennsylvania. In fact, his only connection to Reading, Pennsylvania arises from Adams' application. Moreover, even though Mr. Gilbert has made perhaps as many as five application-related trips

to Reading (however, only for a few hours each trip), Mr. Gilbert stated that he only went there once “[t]o see Reading to try to understand what Reading was about.” See Exhibit B at 10. However, on that single visit, Mr. Gilbert did not attempt to properly ascertain, even minimally, the needs of the community (nor has he since). Nor did Mr. Gilbert, on that single trip, attempt to assess or evaluate the extent to which WTVE broadcast non-commercial programming (such as children’s educational/informational programming, public affairs programming, religious programming, or public service announcements) that was responsive to the community’s needs (nor has he since). In fact, Mr. Gilbert stated that he did not even watch WTVE when he was in Reading. See Exhibit B at 12. Mr. Gilbert’s pronouncement that WTVE was not meeting the needs of the Reading community is based solely on his determination that because the station broadcast home shopping programming it was not meeting the needs of the community.

16. Mr. Gilbert also stated that he shared his conclusions with some of the other principals, and his attorneys, Harry Cole and Gene Bechtel. See Exhibit B at 15. For convenience, Mr. Gilbert’s testimony (Tr. at 15-16) is produced, in part, below:

Q (Mr. Hutton). Did you obtain any information about the revenue of WTVE in Reading, Pennsylvania?

A (Mr. Gilbert). No. I’m not sure, but I don’t think so. I wasn’t interested in that fact.

Q. Why weren’t you interested in that?

A. Because that wasn’t the issue that I was interested in.

Q. What were you interested in?

- A. I was interested in whether they were rendering a service to the community.
- Q. What was your conclusion?
- A. They weren't.
- Q. Why not?
- A. Because I believe a television station should serve the interests of the community and make available through the broadcast media what's going on in the community, provide public service on one sort or another. They just weren't.
- Q. Do you know what they were doing?
- A. Yes.
- Q. What was it?
- A. Home shopping network.
- Q. Do you know if any other stations in the country were doing home shopping network programming?
- A. Yes.
- Q. Did you analyze those stations.
- A. Some.
- Q. Do you recall the markets, the other markets that you may have researched?
- A. I think there were about 15 markets that were – I believe it was Silver and whatever it was they were broadcasting into.
- Q. Was that Silver King Broadcasting?
- A. Silver King.
- Q. Did you reach any conclusion as to whether or not Silver King Stations were providing a public service?
- A. Yes.
- Q. What was your conclusion?
- A. They weren't either.
- Q. And did you share that analysis with anyone?
- A. Yes.
- Q. With who?

- A. Robert Haag, probably Fickinger, maybe Umans. I don't know. Probably – I'm not sure who. Harry Cole surely, Gene Bechtel.

17. Mr. Gilbert's testimony shows that he was emphatic in his belief that the broadcast of home shopping programming did not meet the needs of the community. Mr. Gilbert's resolve is further evinced by his testimony that the only reason Adams did not file competing applications against other stations that broadcast home shopping programming was because those station's licenses were not yet up for renewal. *See Exhibit B at 17.* As Mr. Gilbert boldly asserted, "If they had, we would have." *Id.*

- Q. Did you individually or did the group collectively reach a decision not to file against any of the Silver King stations?

A. We never filed. That's all I can remember, that result.

- Q. Do you know why not?

A. None of them were coming up for renewal at that point. If they had, we would have.

Id.

18. Mr. Fickinger, a vice president and director of Adams, provided deposition testimony consistent with Mr. Gilbert's. For example, Mr. Fickinger stated that when he was first approached about obtaining an ownership interest in Adams, Mr. Gilbert had "suggested we had an interest in organizations of mass communications that weren't serving the public interest in the way that they should" and WTVE in Reading, Pennsylvania was an example. *See Exhibit C at 13.* Mr. Fickinger also stated that it was his understanding that at the time Adams filed its application for Reading, Pennsylvania, WTVE was broadcasting home shopping programming. *See Exhibit C at 8.* Mr. Fickinger has never been to

Reading, nor has he ever been involved in any civic activities in and around Reading. *See Exhibit C at 7, 11.*

19. Mr. Umans, another vice president and director of Adams, stated in his deposition that he had no familiarity with the programming or operations of WTVE (Tr. at 7) or the market (Tr. at 8), and he also disclosed that he was unaware of why Adams selected Reading, Pennsylvania as the subject of a competing application other than his understanding from Mr. Gilbert that “there was an opportunity to make application for that specific station. Other than that, I don’t know why out of the hundreds of stations that one was selected.” *See Exhibit D at 35-36.* Mr. Umans has no connections with Reading. Mr. Umans visited Reading approximately 40 years ago. *See Exhibit D at 7.*

20. Finally, principals of Adams stated on the record that they approached Bechtel & Cole about filing the Reading, Pennsylvania application and that “Adams principals determined, in late 1993, that they would like to challenge renewals of stations broadcasting predominantly home shopping programming.” *Adams Response at n.4.* Thus, according to Adams its decision to file the application for Reading, Pennsylvania arose from its concern about whether WTVE was rendering a service to the community, and its subsequent conclusion that WTVE was not because the broadcast of home shopping programming itself does not meet the needs of the community.

21. However, Adams’ conclusion about the broadcast of home shopping programming flies in the face of Commission policy. Just prior to Adams’ epiphany

that the broadcast of home shopping programming did not meet the needs of the community, the Commission specifically held that home shopping stations serve the public interest because, among other things, they provide “an important service to viewers who either have difficulty obtaining or do not otherwise wish to purchase goods in a more traditional manner.” *Home Shopping Report and Order*, 8 FCC Rcd 5321, 5327 (1993). The *Home Shopping Report and Order*,⁷ which was released on July 19, 1993, was issued in response to a requirement in the *1992 Cable Act*⁸ which required the Commission to determine whether home shopping broadcast stations are serving the public interest, convenience, and necessity. The Commission concluded that:

home shopping stations are serving the public interest, convenience, and necessity. We thus find no need to require such stations to modify their program formats in order to retain or obtain renewal of their licenses. We also reject [the suggestion] that such stations, due to the level of their commercial programming, should receive no renewal expectancy. Section 4(g)(2) of the 1992 Cable Act directs the Commission not to use home shopping stations’ format as a basis to deny them a renewal expectancy, even if their commercial programming is found not to serve the public interest.

Home Shopping Report and Order at ¶36.

22. In view of Adams’ minimal efforts in evaluating whether WTVE was actually responsive to the community’s needs and the Commission’s conclusion that

⁷ *Implementation of Section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992 Home Shopping Station Issues*, 8 FCC Rcd 5321 (1993).

the broadcast of home shopping programming served the public interest, Adams' assertion that it had filed its application because WTVE's home shopping format disserved the public interest does not comport with reality.

23. If Adams had determined, after thoughtful analysis and at least some minimally acceptable level of ascertainment of community needs, that WTVE was not providing responsive programming, then at least there would be some basis for finding credibility in Adams' assertion that its sole purpose for filing its competing application against WTVE arose from its interest in determining whether WTVE was meeting the needs of the community, and its subsequent determination that WTVE was not. However, given that (1) the Commission concluded that home shopping programming serves the public interest, (2) that Adams did not ascertain Reading's community needs, (3) that Adams did not even attempt to make a credible evaluation regarding whether WTVE broadcast any non-commercial programming that met those ascertained needs, and (4) that none of Adams' principals have any connection to Reading, there is absolutely no basis for finding a shred of credibility in Adams' assertion that it filed its application because it believed WTVE was not meeting the needs of the community. Adams' professed reason for filing its application for Reading, Pennsylvania, lacks credibility.

⁸ *Cable Television Consumer Protection and Competition Act of 1992*, PUB. L. NO. 102-385, 106 Stat. 460 ("1992 Cable Act").

C. The Timing Of Significant Events Casts Doubt On Adams' Claim That It Filed Its Application On Its Belief That WTVE Was Not Serving The Needs Of The Community.

24. The timing of certain events in Adams' quest for future rewards further undermines Adams' argument that it was motivated by WTVE's alleged programming deficiencies. The first payment of \$11,666,667 (plus interest) to the principals in the *Video 44* settlement was to be made ten days after the Commission's order dismissing Monroe's application became final. See Exhibit E at 3. The order approving the Video 44 settlement was released December 24, 1992. Thus, the first payment to the principals occurred sometime in February 1993. The second payment of \$6,009,757 (plus interest) was to be made within ten days after the Commission's order granting Video 44's license renewal application became final. See Exhibit E at 3. The order granting Video 44's license renewal application was released April 20, 1993. Thus, the Adams principals who were parties to the *Video 44* settlement should have received their second payment in June 1993.

25. According to Mr. Gilbert, he first learned of the opportunity to file the Reading application after conducting a search of license expiration dates for stations that broadcast home shopping programming. See Exhibit B at 25. According to Mr. Gilbert, the search began the year before Adams filed the Reading application, and prior to the formation of Adams. See Exhibit B at 26. The application was filed on June 30, 1994. Adams was formed on November 22, 1993. Therefore, according to Mr. Gilbert's testimony, Adams' search for stations to file against, and specifically its discovery of WTVE in Reading, Pennsylvania as a

target, came sometime after the *Video 44* settlement agreement was approved by the Commission in December 1992, and during the time period that the Adams' principals who were involved in the *Video 44* settlement began receiving settlement payments. The timing of these events is highly probative that Adams' real motive and intent behind filing the Reading, Pennsylvania application was based on its knowledge that substantial rewards could be had by filing competing applications against renewal applicants, rather than concern about WTVE's programming.

D. There Is Substantial Evidence That Adams' Investors Viewed The Filing Of Its Application Primarily As An Investment Opportunity Rather Than As An Opportunity To Build and Operate A Television Station To Address Its Alleged Concerns About WTVE's Programming.

26. There is substantial and specific evidence that Adams' investors viewed the comparative renewal challenge process as a means to reap substantial rewards rather than out of concern about WTVE's programming. For example, even though Mr. Gilbert stated that his interest in evaluating WTVE in Reading was to determine "whether they were rendering a service to the community," Mr. Gilbert also testified that he first learned of the opportunity to file an application for Reading after conducting a search of license expiration dates. *See* Exhibit B at 25. Further, Adams has also stated that, in late 1993, it approached Bechtel & Cole, after the Adams' principals had determined that "they would like to challenge renewals of stations broadcasting predominantly home shopping programming." *Adams Response* at n.4. Although Adams' application therefore purports to be a product of Adams' public service concerns, Reading has shown that the Commission had just determined that home shopping stations did serve the public interest. This

evidence is substantially probative of an intent by Adams, following its success in Chicago, to determine whether it could reap similar rewards by filing speculative applications elsewhere.

27. Further evidence of the apparent speculative intent behind Adams' filing of the Reading application can be found in Mr. Umans' testimony. First, it is apparent that Mr. Umans' interest in Reading was purely financial. Mr. Umans confirmed, in deposition testimony, that he had no familiarity with the programming or operations of WTVE (Tr. at 7), and that he had no knowledge of the market (Tr. at 8). Mr. Umans was also unaware as to why Adams selected the station in Reading as the subject of a competing application. (Tr. at 35). See Exhibit D. Further, although Mr. Umans disclosed that if ultimately granted its application for Reading Adams intended to broadcast Spanish language programming, Mr. Umans was unable to explain the basis for so doing. (Tr. at 9-11). For convenience, that testimony is produced below.

Q (Mr. Hutton). Have you ever engaged in discussions with anyone else about the proposed programming of the station if the Adams Communications application is granted?

A (Mr. Umans). Only internally within our group, with Howard Gilbert and Robert Haag.

Q. What has been the nature of those discussions?

A. That it was our intention as Adams to have the station broadcast as a Spanish language station.

Q. When did those discussions take place?

A. I believe at the onset of our application dating back to 1994, '95.

Q. Who brought the subject up?

A. I don't know.

Q. Did you discuss it with them separately or as a group?

A. I believe together as a group.

Q. Would that have been with the other principals of Adams Communications?

A. I don't recall. I only recall discussing it with Mr. Haag and Mr. Gilbert. No one else.

Q. Why was there an interest in engaging in Spanish language programming?

A. We believed that the area did not have a Spanish language television stations at the time, and it was the opportunity to do that and to service the Spanish speaking population of the area.

Q. What percentage of the population in that area to the best of your knowledge is Hispanic?

A. I do not know a percentage.

Q. Do you have any rough estimate?

A. I do not.

Q. Do you know if it's greater than 5 percent?

A. I have no knowledge of the percentage of the Spanish population.

Q. If you have no knowledge of the percentage of Hispanic population, why was it a matter of interest that the station provide programming to that population?

A. Without my knowing specifics, we – the group felt there was a need and an opportunity for a Spanish language station. Probably that research had been done, but not by me. I went along with the view.

28. Although Mr. Umans may have lacked knowledge with regard to the percentage of Spanish-speaking individuals in the Reading market, he certainly knew what he believed to be his percentage of ownership in Adams. Of great concern to Mr. Umans was whether Mr. Gilbert was reducing Mr. Umans' ownership percentage in Adams from 9.0 % to 8.7%. (Tr. at 42). At first glance the 0.3% differential seems inconsequential, especially when the paramount objective of the investor group is to ensure that the needs of the broadcasting public are

properly being met. However, upon further reflection, the 0.3% differential has the potential to be anything but inconsequential. As an illustration, for every \$1 million in net settlement payments that an investment group might receive, a 0.3% share would yield \$30,000. Viewed in this light, Mr. Umans' concern is certainly understandable.

29. Even though Adams claims that it filed its application with the requisite intent to build and operate a television station in Reading, it is curious that Adams has never held a meeting with all of the principals in attendance. (TR. at 20). Adams' principals never met as a group to discuss the management of the station, or to develop an operating plan for the station in the event Adams' application was granted. See Exhibit D at 11. Reading anticipates that Adams will argue that this fact demonstrates that the principals never met to discuss filing the application for speculative purposes. However, because of the *Video 44* settlement and Adams' acknowledgment in its response on fee arrangements of its knowledge regarding the law against filing an application for speculative purposes, there would be no reason, and in fact, it would be dangerous, to hold such discussions. Cf. *Garden State Broadcasting Limited Partnership*, 996 F.2d 386, 392 (D.C. Cir. 1993) (based on their experience in receiving a substantial settlement involving another license, the principals were aware of the potential reward of settlement and of the dangers of discussing settlement as an objective).

30. The aforementioned facts provide substantial evidence that Adams did not file its application for Reading with the intent to build and operate a television

station. Rather, the evidence suggests that Adams filed its application for speculative purposes. The testimony of Adams' principals demonstrates that Adams is comprised of a group of individuals who over the years have invested in numerous profit-making ventures. The Adams principals, as former principals in Monroe, profited substantially from the settlement of a comparative case involving a television station in Chicago. Subsequent to the Commission's approval of the Monroe settlement, Adams searched the database of license expiration dates to target stations they viewed as vulnerable to comparative challenge with the apparent understanding and knowledge that these stations represented a potential source for substantial rewards to be gained by participating in a comparative proceedings.

E. The Fee Arrangements Between Adams And Its Counsel Together With The Fee Arrangements Between Monroe And Its Counsel Show An Intent By Adams To Engage In Speculation.

31. Pursuant to the *Memorandum Opinion and Order*, FCC 99M-71 (released November 1, 1999), on November 1, 1999, Adams provided to Reading, copies of documents which were submitted to the Presiding Officer for his *in camera* inspection in connection with Reading's motion to compel disclosure of certain fee arrangements between Adams and its counsel, Bechtel & Cole, and the fee arrangements between Monroe and its counsel, Bechtel & Cole. As a condition of the Presiding Officer's order, the documents are to remain in the custody of Reading's counsel and can be discussed with the Reading clients. However, at this time, the documents are not to be placed in the public record.